
THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARLON ALONZO SMITH,

Defendant.

**MEMORANDUM DECISION AND
ORDER DENYING CERTIFICATE
OF APPEALABILITY**

Case No. 2:16-cr-00020-DN

District Judge David Nuffer

This case is on limited remand from the Tenth Circuit Court of Appeals to consider whether to issue a certificate of appealability.¹ “A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.”² “To achieve this, [the defendant] must show ‘that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and . . . whether the district court was correct in its procedural ruling.’”³

Mr. Smith cannot make a substantial showing of the denial of a constitutional right with his Motion for Relief Under Hazel-Atlas.⁴ Mr. Smith’s arguments under [FED. R. CIV. P. 60\(d\)\(3\)](#) and the Supreme Court’s opinion in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*⁵ challenge only his criminal case and his conviction and sentence.⁶ Under binding precedent, such

¹ Order, *United States v. Smith*, no. 24-4066 (10th Cir. June 5, 2024), [docket no. 284](#), filed June 5, 2024.

² 28 U.S.C. § 2253(c)(2).

³ *United States v. Wicken*, 514 Fed. App’x 721, 723 (10th Cir. 2013) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

⁴ [Docket no. 273](#), filed Apr. 29, 2024.

⁵ 322 U.S. 238 (1944).

⁶ Motion for Relief Under Hazel-Atlas at 6, 8-26.

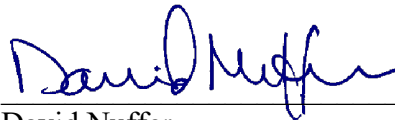
challenges regardless of their label “must be considered a second-or-successive collateral attack” subject to authorization requirements of [28 U.S.C. § 2255\(h\)](#).⁷

Because Mr. Smith did not first seek authorization from the Tenth Circuit Court of Appeals for the filing of his Motion for Relief Under Hazel-Atlas His as a second-or-successive motion under [28 U.S.C. § 2255](#), subject matter jurisdiction is lacking. No reasonable jurist would find the denial and dismissal without prejudice of Mr. Smith’s Motion for Relief Under Hazel-Atlas for lack of jurisdiction debatable. Therefore,

IT IS HEREBY ORDERED that Mr. Smith is DENIED a certificate of appealability.

Signed June 7, 2024.

BY THE COURT

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer
United States District Judge

⁷ [United States v. Baker](#), 718 F.3d 1204, 1207 (10th Cir. 2013).